

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Rex Fornaro

v.

Case No. 06-cv-468-PB

Daniel P. Neelon, Esq., et al.

O R D E R

Daniel P. Neelon and Wayne, Richard & Hurwitz, LLP ("Neelon") have moved to dismiss Rex Fornaro's malpractice complaint for failure to state a claim. Paul Kleinman, Esq. and Bouchard & Kleinman ("Kleinman") have filed a motion to join Neelon's motion. I allow Kleinman to join Neelon's motion but deny Neelon's motion for the following reasons:

1. I cannot conclusively determine from the complaint that Fornaro's claims are barred by the statute of limitations.

2. Neelon's collateral estoppel argument is misconstrued. Although Fornaro cannot relitigate determinations that were made in prior proceedings, he remains free to argue that, but for defendants' malpractice, the results of his malpractice action

against Attorney Ganon would have been different.

Kleinman's motion to dismiss (Doc. No. 16) is granted to the extent that it seeks to join in Neelon's motion to dismiss but is otherwise denied. Neelon's motion to dismiss (Doc. No. 15) is denied.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

May 3, 2007

cc: Rex Fornaro, pro se
Ralph Suozzo, Esq.
Christopher Flanagan, Esq.
Michele Carlucci, Esq.
William Bogaert, Esq.